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FM USEU BRUSSELS

TO RUEHC/SECSTATE WASHDC IMMEDIATE

INFO RUCNMEM/EU MEMBER STATES COLLECTIVE IMMEDIATE

RUEHGG/UN SECURITY COUNCIL COLLECTIVE IMMEDIATE

RUCNIRA/IRAN COLLECTIVE IMMEDIATE

RHEHNSC/NSC WASHDC IMMEDIATE

RUEATRS/DEPT OF TREASURY WASHDC IMMEDIATE

RUEAWJA/DEPT OF JUSTICE WASHDC IMMEDIATE

RHEFHL/DEPT OF HOMELAND SECURITY WASHINGTON DC IMMEDIATE

RUEAORC/US CUSTOMS AND BORDER PROTECTION WASHINGTON DC IMMEDIATE

RUEADRO/HQ ICE DRO WASHINGTON DC IMMEDIATE

RHMFIS/FBI WASHINGTON DC IMMEDIATE

RHMFIS/HOMELAND SECURITY CENTER WASHINGTON DC IMMEDIATE

RUEAIIA/CIA WASHINGTON DC IMMEDIATE

RUEKJCS/DOD WASHDC IMMEDIATE

S E C R E T SECTION 01 OF 03 BRUSSELS 000101

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TREASURY FOR TFFC, TFI, OIA

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TAGS: [ETTC](#) [KTFN](#) [PTER](#) [EFIN](#) [KCRM](#) [KJUS](#) [KHLS](#) [EUN](#) [UNSC](#)

IR, PREF, PINR, PHUM, FR, UK, ASEC, BE

SUBJECT: (C) EU LIFTS MEK SANCTIONS; SECRETARIAT REQUESTS

USG ASSISTANCE

REF: A. BRUSSELS 41

[B](#). 2008 BRUSSELS 870

[C](#). 2008 PARIS 1188

[D](#). 2008 LONDON 2060

[E](#). 2008 BRUSSELS 1106

[F](#). LONDON 100

[G](#). STATE 2046

Classified By: CDA Christopher W. Murray for reasons 1.4 (b), (d), and (e).

[1](#). (U) Action Request: Please see paragraphs 11-12.

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Summary  
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[2](#). (S//NF) At the January 26 EU General Affairs and External Relations Committee (GAERC), EU-27 Foreign Ministers approved as an "A-point" (no discussion) the de-listing of the Mujahideen-e Khalq (MEK) as a terrorist organization from the EU's autonomous terrorist designation list (REF A). FMs subsequently discussed the morning's decision, however, over a closed lunch session at the request of one Member State (read: France). EU Council Secretariat Director General Robert Cooper telephoned USEU Charge immediately after the GAERC's decision and solicited USG assistance to enable re-listing of the MEK at EU level. USEU conversations with other key EU Member State contacts suggest that Cooper may have glossed over political divisions that remain over the EU designation of MEK. Separate contacts hint that there may be no immediate financial impact on the MEK as a result of the EU de-listing because apparently no MEK assets were frozen at the EU-level, but the group could re-start fundraising efforts. France has appealed the court annulment of the previous EU designation and will continue to push for EU re-listing, preferably with clear USG support. A meeting of the EU expert-level designation committee could occur as early as February 26 (please protect), and any USG information lending weight to that decision-making process should be received 15 days in advance for bureaucratic reasons. END SUMMARY.

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Cooper's Suggestion  
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13. (C) According to EU law, the EU cannot designate an individual or entity as a terrorist without its prior designation by a "competent authority" as the underlying legal basis. EU Council Secretariat Director General Robert Cooper telephoned USEU Charge immediately after the GAERC's de-listing decision to suggest that the U.S. ask the EU to re-list the MEK on the basis of the renewed U.S. designation.

He explained that the UK government had been the initial competent authority which enabled the EU to designate the MEK. When the UK court struck down the validity of the UK government's MEK listing, the EU in turn lost its legal basis to continue the designation at EU level. The subsequent French effort to sustain the EU listing was in turn deemed insufficient by the EU's Court of First Instance, as described in the Court's decision of December 4, 2008 (REFS A-E).

14. (C) Cooper then asserted that EU Member States actually do consider the MEK a terrorist group, but the EU still must refer to a decision by a "competent authority" to ground an EU designation of the MEK. Cooper proposed to USEU Charge that the USG request the EU to designate the MEK and relist it as a terrorist organization. Cooper noted, in the meantime, that the Iranian Government has sent a letter to the EU requesting that the MEK be listed as a terrorist group. Cooper commented that a U.S. request to the EU would take possible political pressure off the EU, deflecting the

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implication that however it acted, the EU was acting in response to the Iranians.

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Additional Nuance from other Contacts  
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UK  
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15. (C//NF) USEU conversations with other key EU Member State contacts suggest that Cooper may have glossed over political divisions that remain over the EU designation of MEK. A UK legal contact recommended outright against the USG's providing a formal request for the EU to relist the MEK for several reasons:

- the EU is currently "having issues" with acting to designate terrorists on the basis of third country proposals (certain Member States are increasingly uncomfortable with this);
- the MEK case has many down-sides and risks, given the group's unique context and history (making it a bad case to test the EU Court's willingness to continue allowing EU terrorist designations on the basis of third country requests);
- several EU Member States are unhappy about the idea of re-designating the MEK;
- a "strategic view" is needed, and the specific MEK case is "extremely sensitive right now" for EU governments and publics. This contact echoed REF F in describing that in the UK's case, "Ministers are being grilled by the Parliament and are sick of it," noting it has become a resource issue as well.

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Council Staff  
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16. (C//NF) Another Council Secretariat contact acknowledged that the EU de-listing of MEK would have little operational effect, as no MEK funds have been identified to date as being

frozen under the EU authority. This Council contact said the French may have funds frozen under separate domestic authorities, however. He explained that the GAERC decision was subsequently discussed at the group's lunch, per one Member State's request. France has an active request for the EU to re-list on a strengthened domestic investigation basis and is appealing the December 4 EU court ruling. Belgium, normally an outspoken human rights advocate in these decision-making circles, has raised security concerns in support of re-listing; thus France will not stand alone despite misgivings of UK or other countries. The Council contact stressed that a USG request to the EU for designation would be to complement the French initiative; using multiple decisions by competent authorities as an underlying legal basis for future decisions to list the MEK would be preferred to hedge against a replay of the annulment of the UK basis. Our contact suggested that the EU and U.S. could adopt common talking points in the event of a subsequent EU decision to show unity of approach and preempt any MEK or supporter claims that the EU was acting solely in response to a USG demand.

¶7. (S//NF) The Council contact said a meeting of the EU's designation committee (Common Position 931 Working Party) could occur as early as February 26 (please protect; EU meeting date is classified Secret under EU procedures) to consider a new MEK designation. Any USG information lending weight to that decision-making process should be received 15 days in advance, as the Council Secretariat must circulate such information to EU capitals for timely consideration. The contact acknowledged that some Member States stress the

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need for "new" evidence of MEK terrorist activity, but argues that the fact of the U.S. decision to re-list the MEK is in itself "new" information which could serve as evidence in any future EU designation needed for the Statement of Reasons. EU Permanent Representatives (COREPER II) agreed last week that France should draft a new and better constructed proposed Statement of Reasons on the MEK which could be considered as a "new" listing (allowing for the element of surprise). Our Council contact asserts that the EU would need the following elements from the USG to contribute to this exercise:

- a request that the EU consider designating the MEK,
- reference to the proper competent authority upon which the USG decision was made (referring to the U.S. executive order),
- language normally contained in U.S. nonpapers to the EU requesting consideration for terrorist designations, e.g. a brief statement explaining why the USG has made its decision and encouraging others to follow suit. Our contact thinks it would not/not be necessary to share classified U.S. information with the EU beyond our normal demarche statements for terrorism designations.

¶8. (C//NF) The Council contact suggested the credibility of other USG requests for EU designation of terrorist groups depends on our making an explicit request for the MEK as well. It would seem odd and perhaps deliberate to leave this group out of the series of formal U.S. requests for EU terrorist listings.

¶9. (C//NF) The Council contact explained that Iran has sent multiple letters requesting the EU not to de-list the MEK. However, the EU has not yet received a letter from Iran requesting the EU to re-list the MEK. Council hopes to avoid a scenario whereby the EU is acting on behalf of a request of the Iranian regime. The preferred requestors would be France, the United States, and perhaps Canada.

¶10. (SBU) Our contact noted that 3,000 MEK supporters are expected to celebrate today's GAERC decision on January 27 in front of the EU Council building in Brussels.

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Action Request

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¶11. (C) USEU requests Washington guidance in response to Cooper's suggestion for a formal U.S. request to the EU to designate the MEK as a terrorist organization. END ACTION REQUEST.

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Comment  
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¶12. (C) USEU had already alerted key interlocutors to select points from REF G, which generated the above discussions. In order for the EU to autonomously designate a terrorist individual or entity upon request by a third country's competent authority, a formal and explicit request must be made. Any future MEK designation will certainly be challenged for a fourth time at the EU courts, even as the French appeal the third court annulment of the EU's MEK listing. (To date the EU has failed, at least as of today's GAERC lunch, to obtain the necessary majority in favor of a Council appeal to the ruling.) Assuming the December 4 Court of First Instance decision reasoning stands, the EU court will demand to see all unclassified and classified information relevant to the EU's decision to designate a challenging individual or entity, including any USG-provided information (REF A). End Comment.

MURRAY

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